

## **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CHANGE OF JUDGE AND FOR RANDOM REASSIGNMENT TO MARICOPA COUNTY JUDGE**

Judges are presumed to be fair and unbiased. When a judge's son was the defendant, the presiding judge did not abuse his discretion by assigning the case to a judge who was unaffiliated with the Maricopa County Superior Court.

The State of Arizona, by and through undersigned counsel, in response to the defendant's Motion, asks this Court to deny the motion. The State's response is based upon the attached Memorandum of Points and Authorities.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

Rule 81, Rules of the Supreme Court, contains the Arizona Code of Judicial Conduct. Canon 2 provides in part:

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family . . . or other relationships to influence the judge's judicial conduct or judgment.

Canon 3 (E) provides in part:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

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(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding . . . .

The Comments to Canon 2 state:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Here, Judge Dann is a member of the Superior Court in Maricopa County, and the defendant is Judge Dann's son. The news media has sensationalized this fact and quoted Judge Dann's comments concerning the defendant's charges.

To avoid public perception that the defendant, as Judge Dann's son, might obtain preferential treatment by fellow associate Judges, Judge Meyers determined to disqualify all member of the Superior Court in Maricopa County and assign the matter to a judge not affiliated with the Maricopa County Superior Court Bench.

By doing this, Judge Myers maintained the prestige of judicial office and eliminated any potential allegations that Judge Dann's status might have affected the outcome of the trial. Further, this procedure eliminated the need for the fellow associates from recusing themselves individually if they felt their friendship for Judge Dann might affect their impartiality.

In conclusion, Judge Meyers's decision was not an abuse of discretion and there is no need to remove this case from this Court. The State therefore asks this Court to deny the motion for change of judge and reassignment to another Maricopa County Superior Court Judge.